



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HENTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

October 12, 2006

CERTIFIED RETURN RECEIPT 7004 2510 0004 1824 4103

Tracy Burnham
Decorative Landscaping, Inc.
3231 North Millcreek Road
Pleasant Grove, Utah 84062

Subject: Proposed Assessment for Notice of Violation MN2006-03-09, Decorative Landscaping, Inc., T & M Holding, S/035/023, Salt Lake County, Utah

Dear Mr. Burnham:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector Paul Baker on September 20, 2006. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MN-2006-03-09- Violation 1 of 1 \$660

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty.

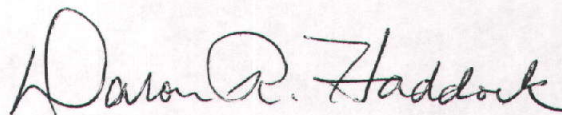
Tracy Burnham
M0350023
October 12, 2006
Page 2 of 6

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or appointed Conference Officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

drh/vs

Enclosure: Worksheets

cc: Vickie Southwick, Exec. Sec.
Vicki Bailey, Accounting

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WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Decorative Landscaping Inc. / T & M Holdings PERMIT M0350023

NOV / CO # MN-2006-03-09

VIOLATION 1 of 1

ASSESSMENT DATE October 12, 2006

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>MC-2005-03-02</u>	<u>3/17/2005</u>	<u>5</u>
<u>MC-2006-03-03</u>	<u>5/4/2006</u>	<u>5</u>

TOTAL HISTORY POINTS 10

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Administrative
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS NA

PROVIDE AN EXPLANATION OF POINTS:

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS NA

PROVIDE AN EXPLANATION OF POINTS:

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? 8
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to comply with the local agency's statutes, rules, regulations or ordinances. In this case, the Division was notified by Bluffdale City, that the mining operation was not complying with the local zoning ordinances. The Operator did not notify the Division that approvals had not been received from Bluffdale City, and this is considered potential hindrance because the Division received this information from the city. Because the Operator is out of compliance with another agency's requirements, there is potential for hindrance. Because of the potential hindrance, points are assigned to the lower end of the range.*

TOTAL SERIOUSNESS POINTS (A or B) 8

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The violation was the result of the Operator not taking reasonable care to fulfill the requirements of local agencies. This shows some indifference to the regulations. A prudent Operator would understand the need to acquire approvals from all appropriate agencies prior to mining. In this case the Operator is considered to show ordinary negligence in regard to obtaining all necessary permits and approvals, thus the assignment of points in the middle part of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the order has been terminated. Points will be awarded depending on how quickly and thoroughly the abatement is met.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MN-06-03-09(1)</u>	
I. TOTAL HISTORY POINTS	<u>10</u>
II. TOTAL SERIOUSNESS POINTS	<u>8</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u> </u>
TOTAL ASSESSED POINTS	<u>26</u>

TOTAL ASSESSED FINE \$ 660

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**TRACY BURHAM
DECORATIVE LANDSCAPING INC
3231 NORTH MILLCREEK ROAD
PLEASANT GROV UTAH 84062**

2. Article Number

(Transfer from service label)

7004 2510 0004 1824 4103

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

TRACY BURHAM

C. Date of Delivery

10/16/06

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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DIST SVC 10/17/2006



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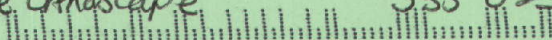
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PENNY BERRY
STATE OF UTAH
DIVISION OF OIL GAS & MINING
PO BOX 145801
SALT LAKE CITY UT 84114-5801

RECEIVED
OCT 17 2006
DIV. OF OIL, GAS & MINING

Letter Dated 10-20-03
Decorative Landscape

MN 2002-03-09
335023



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